

## REMARKS

The foregoing amendments to the specification and to the claims of this application provide compliance with the allowable claim set as suggested by Supervisory Patent Examiner Amy Nelson on November 7, 2003.

Applicant respectfully submits herewith a supplemental oath in order to correct the typographical error that occurred on the original whereby the original oath stated the wrong variety number in the title. No new matter has been added.

In addition, Applicant respectfully submits as shown in the amendments to the specification and to the claims, these corrections are needed for proper disclosure and protection of the invention and require no substantial amount of additional work on the part of the PTO. Applicant herein submits the Summary of the Invention section, Deposits section and claims have been amended in order to properly include the ATCC Accession Numbers of the hybrid 39K40 and the inbred parents GE535658 and GE516223. The changes do not add new matter as there is literal support for the minor changes on page 7 in the originally filed specification. The Applicant provides assurance that:

- a) during the pendency of this application access to the invention will be afforded to the Commissioner upon request;
- b) all restrictions upon availability to the public will be irrevocably removed upon granting of the patent;
- c) the deposit will be maintained in a public depository for a period of thirty years, or five years after the last request for the enforceable life of the patent, whichever is longer;
- d) a test of the viability of the biological material at the time of deposit will be conducted (see 37 C.F.R. § 1.807); and
- e) the deposit will be replaced if it should ever become inviable.

Therefore, Applicant submits at least 2500 seeds of hybrid maize plant 39K40 and the inbred parents GE535658 and GE516223 have been deposited with the ATCC. Copies of the ATCC deposit receipts are included in this 37 C.F.R. § 1.312 Amendment After Allowance. Applicant respectfully requests consideration of the aforementioned remarks.

Furthermore, the Applicant submits the issue fee is being paid separately in the subsequent week.

No fees or extensions of time are believed to be due in connection with this amendment; however, consider this a request for any extension inadvertently omitted, and charge any additional fees to Deposit Account No. 26-0084.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Lila A. T. Akrad". The signature is fluid and cursive, with a large initial "L" and a stylized "A".

LILA A. T. AKRAD, Reg. No. 52,550  
McKEE, VOORHEES & SEASE, P.L.C.  
801 Grand Avenue, Suite 3200  
Des Moines, Iowa 50309-2721  
Phone No: (515) 288-3667  
Fax No: (515) 288-1338  
**CUSTOMER NO: 27142**

Attorneys of Record

- pw -



AMENDED

# ATCC

10801 University Blvd • Manassas, VA 20110-2209 • Telephone: 703-365-2700 • FAX: 703-365-2745

The American Type Culture Collection (ATCC) has received your deposit of seeds in connection with the filing of an application for patent. The following information is provided to fulfill Patent Office requirements.

**Name and Address of Depositor:** Pioneer Hi-Bred International, Inc.  
Attn: Steve Callistein  
7100 NW 62<sup>nd</sup> Avenue  
P.O. Box 1000  
Johnston, IA 50131-1000

**Deposited on Behalf of:** Pioneer Hi-Bred International, Inc.

**Date of Receipt of Seeds by the ATCC:** September 12, 2003

<u>Scientific Description</u>	<u>Depositor's Reference</u>	<u>Patent Deposit Designation</u>
Inbred corn (maize) seed	GE535658	PTA-5505

**The ATCC understands that:**

1. The deposit of these seeds does not grant ATCC a license, either express or implied, to infringe the patent, and our release of these seeds to others does not grant them a license, either express or implied, to infringe the patent.
2. If these seeds should die or be destroyed during the effective term of the patent, it shall be your responsibility to replace them with living seeds of the same type. It is also your responsibility to supply a sufficient quantity for distribution for the deposit term.

Prior to the issuance of a U.S. Patent, the ATCC agrees in consideration for a one-time service charge, not to distribute these seeds or any information relating thereto or to their deposit except as instructed by the depositor or relevant patent office. After a relevant patent issues, and we are instructed to release the seeds, they will be made available for distribution to the public without any restrictions.

The ATCC agrees to maintain the seeds for a period of 30 years from deposit date, or 5 years after the most recent request for a sample, whichever is longer.

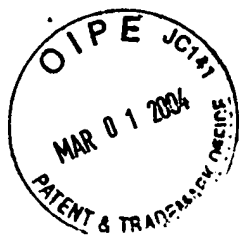
We will inform you of requests for the seeds for 30 years from date of deposit.

The seeds were tested September 19, 2003 and were viable.

American Type Culture Collection

By Marie Harris  
Marie Harris, Patent Specialist  
ATCC Patent Depository

Date: February 27, 2004



OCT 06 2003

# ATCC

10801 University Blvd • Manassas, VA 20110-2209 • Telephone: 703-365-2700 • FAX: 703-365-2745

The American Type Culture Collection (ATCC) has received your deposit of seeds in connection with the filing of an application for patent. The following information is provided to fulfill Patent Office requirements.

**Name and Address of Depositor:**

Pioneer Hi-Bred International, Inc.  
Attn: Steve Callistein  
7100 NW 62<sup>nd</sup> Avenue  
P.O. Box 1000  
Johnston, IA 50131-1000

**DOCKETED**  
OCT 08 2003

**Deposited on Behalf of:**

Pioneer Hi-Bred International, Inc.

**Date of Receipt of Seeds by the ATCC:**

September 9, 2003

**Scientific Description**

**Depositor's Reference**

**Patent Deposit Designation**

Hybrid corn (maize) seed

39K40

PTA-5464

**The ATCC understands that:**

1. The deposit of these seeds does not grant ATCC a license, either express or implied, to infringe the patent, and our release of these seeds to others does not grant them a license, either express or implied, to infringe the patent.
2. If these seeds should die or be destroyed during the effective term of the patent, it shall be your responsibility to replace them with living seeds of the same type. It is also your responsibility to supply a sufficient quantity for distribution for the deposit term.

Prior to the issuance of a U.S. Patent, the ATCC agrees in consideration for a one-time service charge, not to distribute these seeds or any information relating thereto or to their deposit except as instructed by the depositor or relevant patent office. After a relevant patent issues, and we are instructed to release the seeds, they will be made available for distribution to the public without any restrictions.

The ATCC agrees to maintain the seeds for a period of 30 years from deposit date, or 5 years after the most recent request for a sample, whichever is longer.

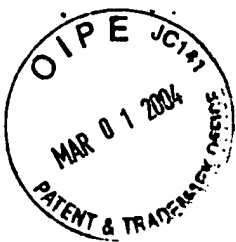
We will inform you of requests for the seeds for 30 years from date of deposit.

The seeds were tested September 15, 2003 and were viable.

American Type Culture Collection

By Mari Harris  
Marie Harris, Patent Specialist  
ATCC Patent Depository

Date: October 2, 2003



# ATCC

OCT 06 2003

10801 University Blvd • Manassas, VA 20110-2209 • Telephone: 703-365-2700 • FAX: 703-365-2745

The American Type Culture Collection (ATCC) has received your deposit of seeds in connection with the filing of an application for patent. The following information is provided to fulfill Patent Office requirements.

**Name and Address of Depositor:**

Pioneer Hi-Bred International, Inc.  
Attn: Steve Callistein  
7100 NW 62<sup>nd</sup> Avenue  
P.O. Box 1000  
Johnston, IA 50131-1000

**DOCKETED**  
OCT 08 2003

**Deposited on Behalf of:**

Pioneer Hi-Bred International, Inc.

**Date of Receipt of Seeds by the ATCC:**

September 15, 2003

**Scientific Description**

**Depositor's Reference**

**Patent Deposit Designation**

Inbred corn (maize) seed

GE516223

PTA-5517

**The ATCC understands that:**

1. The deposit of these seeds does not grant ATCC a license, either express or implied, to infringe the patent, and our release of these seeds to others does not grant them a license, either express or implied, to infringe the patent.
2. If these seeds should die or be destroyed during the effective term of the patent, it shall be your responsibility to replace them with living seeds of the same type. It is also your responsibility to supply a sufficient quantity for distribution for the deposit term.

Prior to the issuance of a U.S. Patent, the ATCC agrees in consideration for a one-time service charge, not to distribute these seeds or any information relating thereto or to their deposit except as instructed by the depositor or relevant patent office. After a relevant patent issues, and we are instructed to release the seeds, they will be made available for distribution to the public without any restrictions.

The ATCC agrees to maintain the seeds for a period of 30 years from deposit date, or 5 years after the most recent request for a sample, whichever is longer.

We will inform you of requests for the seeds for 30 years from date of deposit.

The seeds were tested September 22, 2003 and were viable.

American Type Culture Collection

By Marie Harris  
Marie Harris, Patent Specialist  
ATCC Patent Depository

Date: October 2, 2003